

# CITY OF NEWPORT BEACH

## HARBOR COMMISSION STAFF REPORT

Agenda Item No. 2  
April 8, 2009

**TO:** HARBOR COMMISSION

**FROM:** Harbor Resources Division  
Chris Miller, Harbor Resources Manager  
(949) 644-3043, cmiller@city.newport-beach.ca.us

**SUBJECT:** Aerie Dock Project at 201-207 Carnation Avenue

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### ISSUE

Should the Aerie project applicants at 201-207 Carnation Avenue be permitted to replace the existing double U-shaped float with a dock system capable of berthing 8 vessels for residents and 1 guest side-tie? A Draft Environmental Impact Report (SCH# 2007021054) has been prepared and is available for public comment and review. The 45-day public review period ends on May 4, 2009 and the Draft EIR and comments received will be considered by the Planning Commission and the City Council who will make a final determination on the adequacy of the Draft EIR prior to taking action on the proposed dock system.

### RECOMMENDED ACTION

The Harbor Commission is requested to:

1. Provide comments on the environmental aspects of the dock system, as well as its overall design. Harbor Resources will forward this input to the Planning Commission and the City Council who will review the entire project as a whole.

### DISCUSSION

#### History

On March 12, 2008, staff sought the Harbor Commission's advice on the proposed Aerie dock layout in order to help facilitate the environmental review that would follow. On June 19, 2008, the Planning Commission recommended that the Mitigated Negative Declaration (environmental review) be approved. On July 22, 2008, the City Council heard nearly three hours of testimony and postponed their decision on the Mitigated Negative Declaration until their September 9, 2008 meeting. Relevant to the Harbor Commission's purview, much public discussion focused on the view from the water up to the rocky bluffs, and how the vessels might impact this scenic view. Therefore, staff was tasked with investigating this potential view issue. In addition, the project opponents asked that the Mitigated Negative Declaration be denied and that a full Environmental Impact Report (EIR) be prepared. Minutes from the July 22, 2008 Council meeting may be viewed on the City's website via the Council Agenda for August 12, 2008. In the end, the applicant chose to prepare a full EIR which is publicly available either online at: <http://www.city.newport-beach.ca.us/PLN/projects/projects.htm> or at the following locations:

Planning Department  
3300 Newport Boulevard  
Newport Beach, CA 92658-8915  
(959) 644-3200

Central Library  
1000 Avocado Avenue  
Newport Beach, CA 92625  
(949) 717-3800

### Project Location and Existing Dock System

The Aerie project at 201-207 Carnation Avenue is located near the intersection of Carnation Avenue and Ocean Boulevard near the harbor entrance channel. See Exhibit 1. As indicated, the Bulkhead, Pierhead and Project Lines extend beyond the nearby adjacent docks into the channel. The reason for this unusual Harbor Line configuration is because the Army Corps of Engineers anticipated the bay to be filled to those lines when they were established in 1936. As the years progressed, this never materialized.

The existing floating docks (timber frame, concrete pontoons, and timber deck) are in very poor condition and require complete replacement. These docks can accommodate four (4) small vessels at about 25' to 30' in length. See Exhibit 2.

In June 2007, Harbor Resources requested the applicant to voluntarily demolish the existing dock system because of its hazardous condition. The applicant expressed concern that such an action could jeopardize his ability to construct a replacement dock system; therefore, the deteriorated docks still remain.

### Proposed Dock Layout

Eight (8) replacement slips and one (1) guest side tie dock are requested for the eight (8) new residential units proposed. The new dock layout is located between the existing Pierhead Line and the natural rock outcroppings, with special attention to the existing eelgrass bed on the southern side of the property. The new docks will be composed of timber supported by rotationally molded plastic pontoons which require less draft (bottom clearance) than concrete floats, allowing the dock system to be located as close to the rock outcropping as possible. This layout will accommodate boats up to 100-feet in length. See Exhibit 3 and 4.

The current six (6) steel dock guide piles that support the existing docks will be replaced with 19 new guide piles supporting the new dock system. Of these 19 piles, nine (9) will be larger diameter piles (approx. 2-foot diameter) to support the long, outside, bayward-most side-tie float. All guide piles will be pre-stressed concrete piles set in pre-drilled holes. The wave attenuator, as previously discussed in earlier revisions, has been eliminated from the project design.

The existing 20-foot long gangway will be replaced by a 44-foot gangway. The pile-supported pier walkway between the existing gangway platform and the existing concrete pad will be repaired / replaced with a structure in-like-kind (timber-framing system, a 2x timber deck, and timber railings all around). The existing concrete piles supporting the walkway will be repaired in the form of concrete repairs. The gangway platform construction will include the repair and replacement of four (4) steel piles, timber framing with metal connectors, and a 2x timber deck with railings all around. The existing concrete pad, concrete steps, and safety railings will be repaired and patched as necessary.

As discussed at the March 2008 Harbor Commission meeting, the project engineer (URS Cash and Associates) did evaluate several alternative dock designs before finalizing the proposal as described in this report.

One of the Harbor Commission's concerns at the March 12, 2008 meeting was the possibility of the new dock system encroaching upon the main harbor entrance channel. The project engineer has attempted to illustrate that there are ten "lanes" in the entrance channel (defined as 50' wide lanes) at the project location. As one moves further inside the harbor, these ten lanes decrease to nine lanes as a result of the channel marker near Carnation Cove and not as a result of the proposed docks. See Exhibit 5.

Eelgrass is also abundant near the project's edge, particularly near the southern end. See Exhibit 6. As is typical of all dock construction projects, the applicant will submit an eelgrass survey as part of the application process to the federal and state agencies for review. Any impacts will be mitigated.

#### Harbor Commission's Previous Concerns

At the March 28, 2008 Harbor Commission meeting, several concerns were discussed. The applicant's responses to those concerns are:

#### **Storm Wave Conditions**

Under extreme conditions, up to 2.5 ft. waves could be experienced at the project site (Noble Consultants, Inc. report, May 9, 2006), impacting 30 to 35 boats in Newport Harbor, including those proposed at the Aerie project. This would be an uncommon event occurring under storm conditions from the South to South East. Based on historical accounts, some boat owners have elected to remain in their existing slips during these extreme events, while others have moved their vessels to City of Newport Beach-managed mooring cans within Newport Harbor. The City has between 80 to 100 mooring cans available to the public at any given time, and has traditionally made these available to boaters on a first come, first served basis. It is understood from the Harbor Resources Department that this practice will remain in place.

The Aerie project will utilize a wood-framed system for strength and flexibility which will be beneficial during extreme wave conditions. The dock design shall be based on the extreme wave conditions identified in the coastal engineering study (Noble Consultants, Inc. 2008). A greater concern is the interaction between a berthed boat and the dock system, since the two will move at different cycles from one another thereby causing large line forces and potential physical impacts. During these infrequent severe conditions, boat owners from the Aerie project, like other boat owners in Newport Harbor, will likely request mooring cans from the City. Toward that end, Mitigation Measure 4.9-2a requires that "during periods when boats would be exposed to excessive wave-induced motions, boats should be sheltered at mooring can locations that are available inside Newport Harbor to avoid damage."

#### **Number of Slips Provided for Project**

The Aerie docks will consist of eight boat slips for the eight Aerie residences, with a headwalk extension allowing for the potential side-tie of up to a 30 foot boat for guest

use (visiting vessels). This additional guest dock extension is feasible, since the water depth, eelgrass adjacency and navigation to the adjoining slips is not impacted by the installation of such a dock. This slip would be used strictly for visiting boats and will not be rented or leased.

### **Eelgrass and Biological Impacts**

The eelgrass impact and location of the boat docks has been taken into account with the dock location being previously shifted to mitigate the eelgrass environment. The Harbor Resources Department has reviewed this issue in the past, made recommendations to the Applicant, and the dock design has been revised accordingly. The potential impacts to the eelgrass and biological habitats have been studied by Mr. Rick Ware of Coastal Resources Management (May 12, 2008). The assessment provides for mitigation measures before, during and after construction to ensure protection of habitat that exists on site. With incorporation of these mitigation measures, the project's EIR concluded that potential impacts to eelgrass and other marine species located within the Carnation Cove will be reduced to a less than significant level.

### **Small boat access to Private Beach and along the Harbor's edge**

Access by small and human-powered boating craft along the harbor line is currently restricted by existing docks on the Aerie project site. Although the proposed replacement docks would project further toward the Main Channel than the existing docks, the fundamental navigation conditions for small and human-powered boating craft will not undergo a meaningful change as a result of the project.

Public access to the mean high tide line of the small cove adjacent to the Aerie docks will not be restricted by the project. Kayakers and human-powered watercraft have, and will be able to continue to, access this cove area.

### **Impacts to natural environment during construction; ie, rock outcropping**

The project site's waterfront area is characterized by various rock outcroppings that form a small cove beach. These exposed outcroppings will be protected during the installation of the Aerie docks. To this end, the applicant will not drive pilings into the submerged bedrock, as is typical for these installations. Instead, holes will be drilled into the subgrade (mostly rock strata) and then piles will be installed into those drilled holes. This type of construction limits both noise and vibration.

### **Potential Shoaling**

The Noble Consultants Inc. Report of May 6, 2008, addressed potential shoaling conditions. This report was based on recent observations as well as a review of historical sediment movements, storm conditions, channel orientation, maintenance dredging and storm drainage. Noble Consultants concluded that "with a small percent (approximately 6 percent) of the along-channel blockage areas resulting from the proposed new dock facility, the potential impact to this unique sediment movement process in the entrance channel is insignificant, although localized sand deposit resulting from the presence of the proposed guide piles within the sand-moving path may occur. In addition, the project is located in the down-drift direction of the neighboring Channel

Reef, the project's potential impact on sedimentation at the up-drift location such as Channel Reef is inconsequential."

### **Future Dredging**

Based on the Noble Consultants Report, the impact of this project, as it relates to scour and sedimentation, is considered to be minimal and inconsequential and should not change the characteristics of these processes from historical experience. The beach within the 201-207 Carnation Cove project has historically scoured over time, requiring sand replenishment. The China Cove property to the south has traditionally shoaled, with dredging efforts and sand replenishment of these two facilities coinciding to a balanced "cut and fill" condition.

### **Special Conditions**

Staff has proposed several Special Conditions which the Harbor Commission may evaluate and advise modifying as appropriate. Aside from the routine conditions, these unique Special Conditions are:

1. In accordance with Municipal Code 10.08.030 A. the project applicant shall obtain the proper permits for equipment and materials storage. "Except as otherwise provided in this section, no person shall use any public street, sidewalk, alley or parkway or other public property for the purpose of storing or displaying any equipment, materials or merchandise, or any other commercial purpose. B. Public streets, sidewalks, alleys, or parkways may be used for the purpose of selling, storing, or displaying any equipment, material, merchandise or for other commercial purposes in the following cases:.. For the temporary storage of construction equipment or material provided a permit is issued pursuant to Chapter 12.62 of this Code and the storage is consistent with provisions of the Uniform Building Code."
2. The contractor shall post and update a two week schedule of construction activities at a location(s) easily accessible to local residents.
3. In accordance with Municipal Code 10.28.040 the following noise regulations apply: "A. Weekdays and Saturdays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any weekday except between the hours of seven a.m. and six-thirty p.m., nor on any Saturday except between the hours of eight a.m. and six p.m. B. Sundays and Holidays. No person shall, while engaged in construction, remodeling, digging, grading, demolition, painting, plastering or any other related building activity, operate any tool, equipment or machine in a manner which produces loud noise that disturbs, or could disturb, a person of normal sensitivity who works or resides in the vicinity, on any Sunday or any federal holiday."
4. The project shall be implemented in conformance with the Local Coastal Program - Coastal Land Use Plan.

5. Eelgrass beds have been found adjacent to the project area and shall be protected per the "Southern California Eelgrass Mitigation Policy" prepared and managed by NOAA/ National Marine Fisheries Service.
6. During construction, disturbance of the adjacent beach shall be minimized. Construction materials and equipment shall not be placed on the beach. The beach's sand dollar habitat shall be protected during construction. The project applicant shall submit a Beach Protection Plan to the Harbor Resources Manager for approval prior to start of construction.
7. The project applicant and its successors are notified that even though the proposed dock system replaces an existing dock system, the new docks will be constructed in the Entrance Channel to Newport Bay which is subject to surge and swell activity which may cause damage to the dock system and vessels berthed therein. It is the responsibility of the project applicant and its successors to maintain and operate the dock system to minimize damage to the dock system and vessels. The dock system shall be subject to nuisance abatement per Title 17 of the Municipal Code, if in the opinion of the Harbor Resources Manager, it presents an endangerment to other facilities or vessels in the harbor.
8. The project applicant must remove the existing dock system including the gangway and pier within 90 days of receiving all final regulatory permits allowing the construction of the replacement dock system.
9. The vessels that will be side-tied to the outside, bayward-most float shall not extend into the harbor more than 24' feet from the edge of this outside, bayward-most float.
10. The guest side-tie on the north end of the dock system shall only be available for vessels less than or equal to 30 feet in length. This slip shall be used for guest berthing only and will not be used for any permanent, long term vessel storage, and will not be rented or leased.
11. The number of boat slips approved in the final design must be the same as the number of dwelling units approved by the City Council in the final project approval.

## **PUBLIC NOTICE**

This meeting has been publicly noticed via a mailer (to the residents and occupants within a 310' radius of the project) and jobsite posting on March 23, 2009 and also posted on the City's website on April 3, 2009. See Exhibit 7.

Written comments received as of April 3, 2009 are attached. See Exhibit 8.

This agenda item has been noticed according to the Ralph M Brown Act (72 hours in advance of the public meetings at which the Harbor Commission considers the item). It was also posted on the City's website.

## **ENVIRONMENTAL REVIEW**

An EIR (SCH# 2007021054) has been prepared for the entire project which includes both landside and harbor improvements. The Planning Commission will consider the entire project and will forward their recommendation to the City Council who will make a final determination as to the adequacy of the Draft EIR. After this point, Harbor Resources staff may issue an Approval in Concept with Special Conditions for the dock portion of the project, assuming the EIR has been approved. If the final review process suggests substantial changes to the dock design, then staff may return to the Harbor Commission for review in the future.

Prepared by:

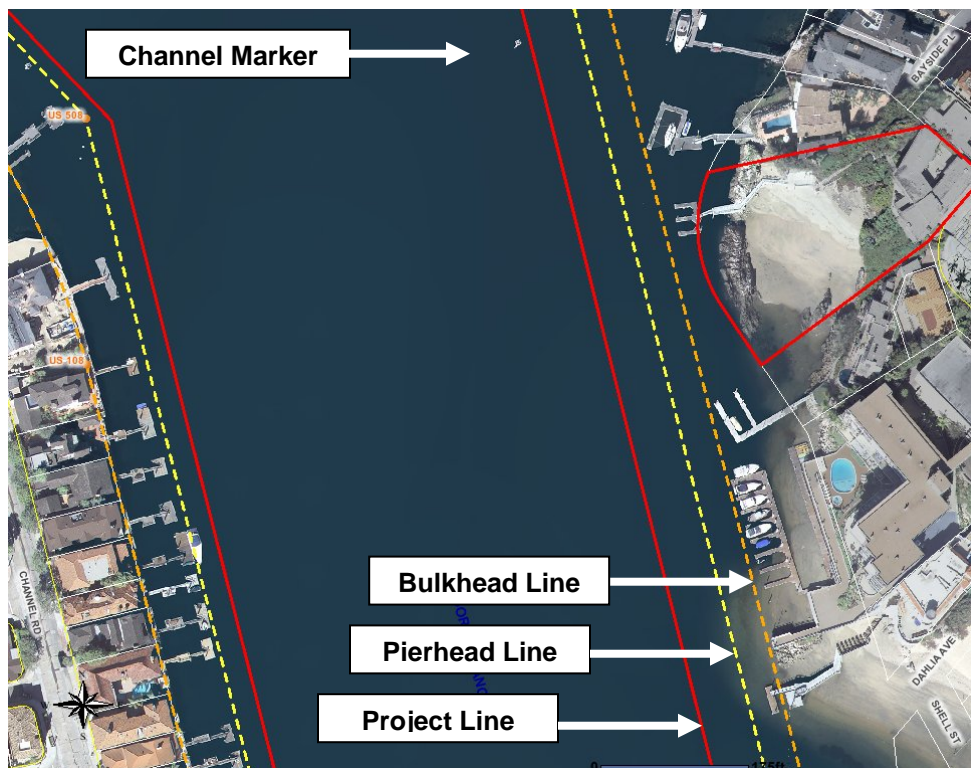
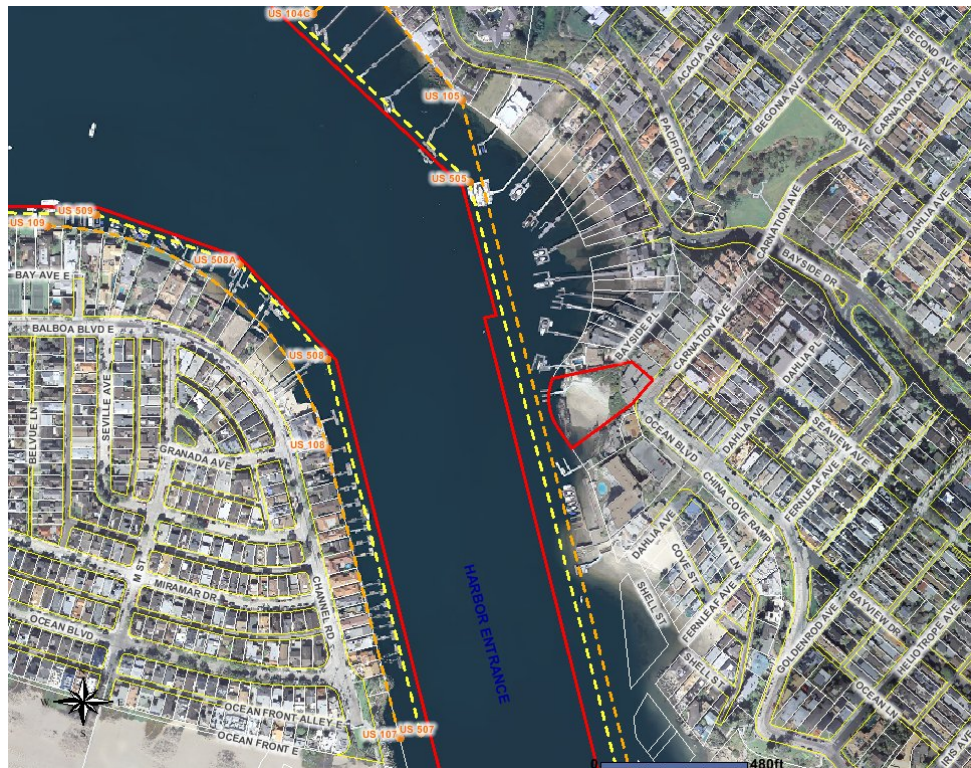
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Chris Miller  
Harbor Resources Manager

Attachments: Exhibit 1: Vicinity Map  
Exhibit 2: Existing Dock Layout  
Exhibit 3: Proposed Dock Layout  
Exhibit 4: Proposed Dock Layout with Dimensions  
Exhibit 5: Proposed Dock Layout with Channel Lanes  
Exhibit 6: Vicinity Map with Eelgrass  
Exhibit 7: Public Notice  
Exhibit 8: Public Comments as of April 3, 2009



## Exhibit 1 Vicinity Map





## **Exhibit 2**

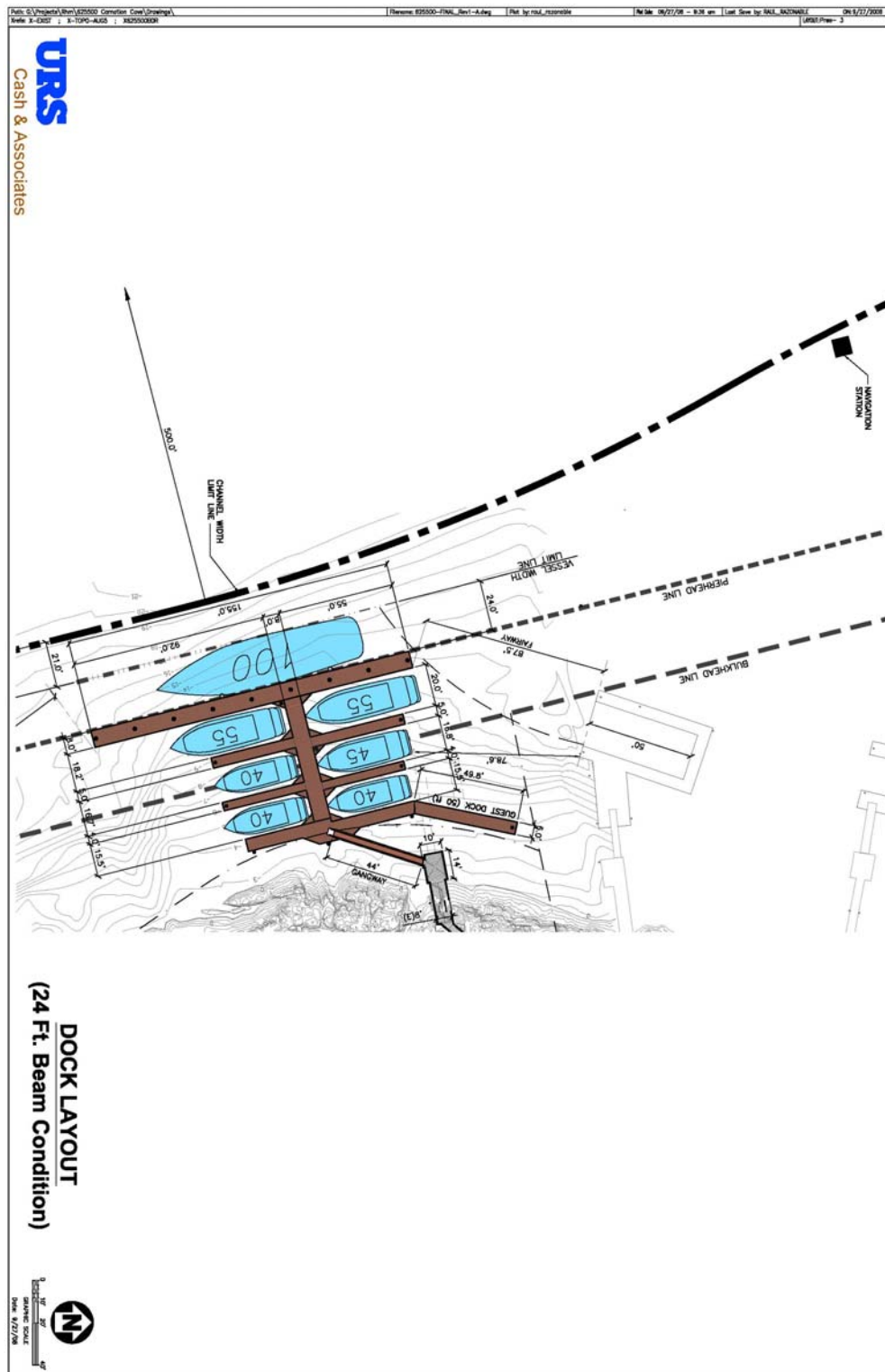
### **Existing Dock Layout**



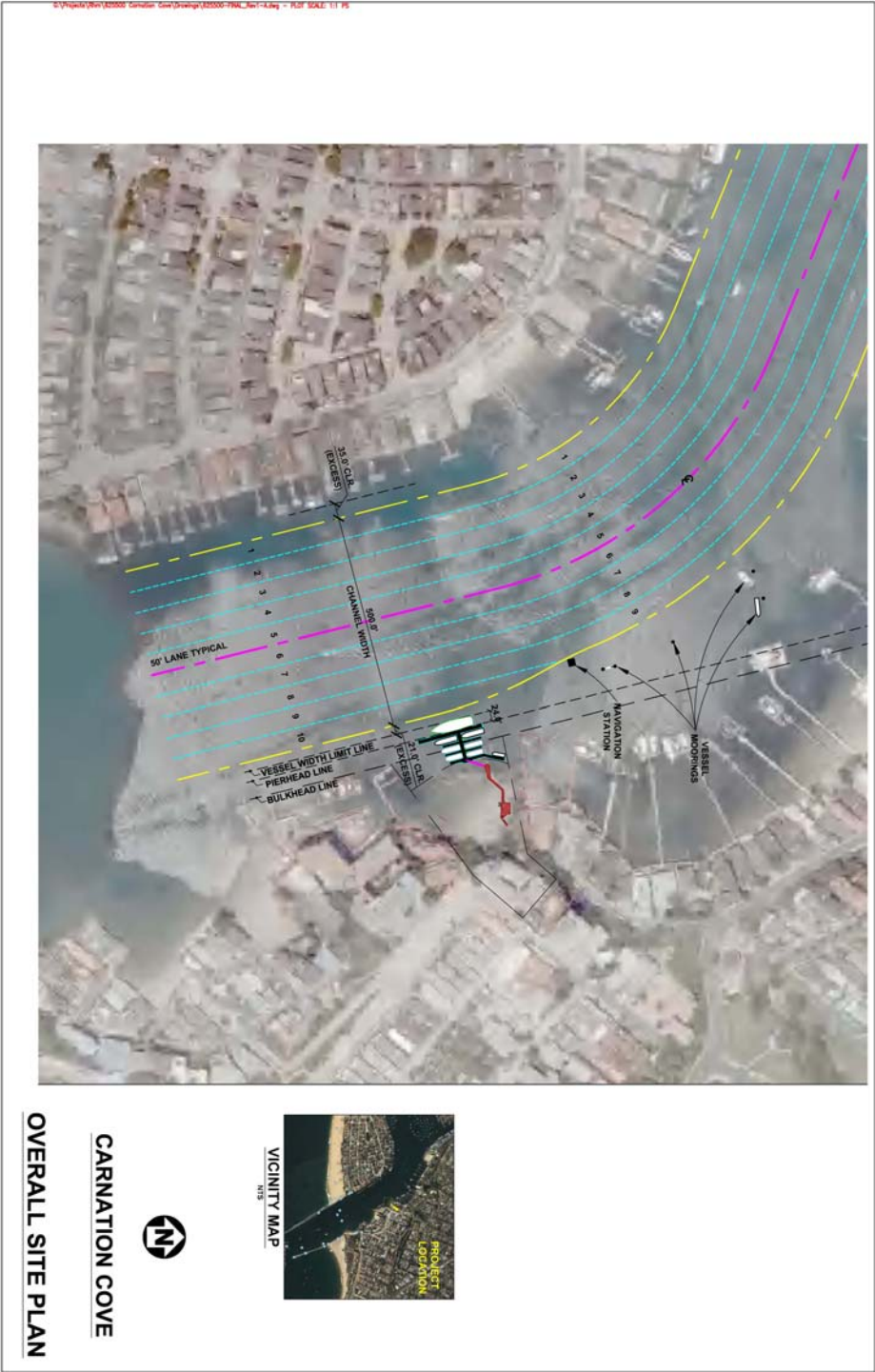


## Exhibit 4

### Proposed Dock Layout with Dimensions



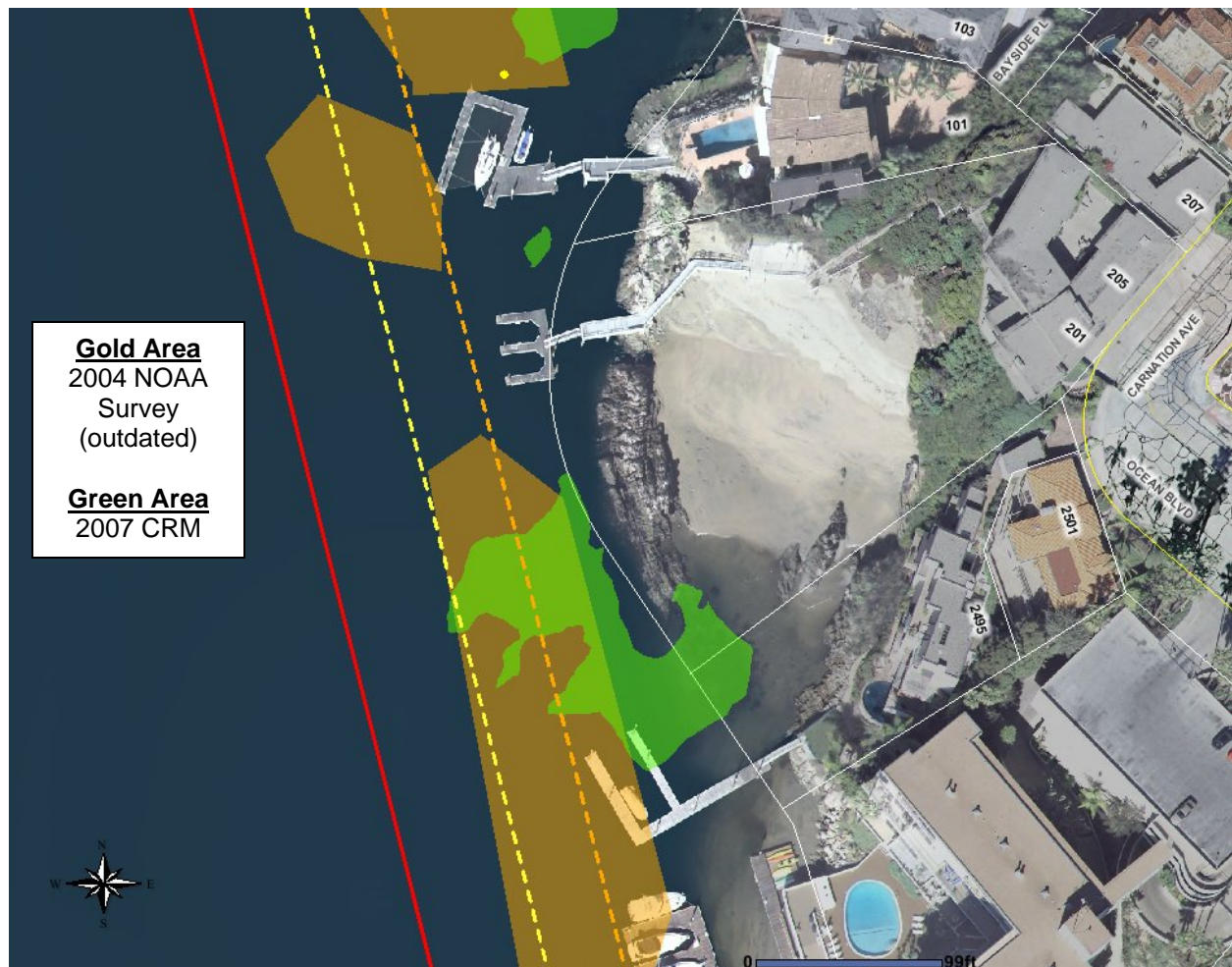
**Exhibit 5**  
Proposed Dock Layout with Channel Lanes





## Exhibit 6

### Vicinity Map with Eelgrass



**Exhibit 7**  
**Public Notice**



**CITY OF NEWPORT BEACH**

**HARBOR RESOURCES**

**PUBLIC NOTICE**

**201 - 207 Carnation Avenue**  
**Dock Replacement Project**

The project applicant at 201 – 207 Carnation Avenue is proposing a project which includes replacement of an existing two slip dock system capable of berthing four vessels, with a system capable of berthing up to nine vessels. In addition, the upland property will be rebuilt with 8 condominiums.

A Draft Environmental Impact Report (DEIR) for the entire project has been prepared and is available either online at: <http://www.city.newport-beach.ca.us/PLN/projects/projects.htm> or at the following locations:

Planning Department  
3300 Newport Boulevard  
Newport Beach, CA 92658-8915  
(959) 644-3200

Central Library  
1000 Avocado Avenue  
Newport Beach, CA 92625  
(949) 717-3800

During the EIR public review period, the Harbor Commission is requested to evaluate the DEIR and advise the City's Harbor Resources Division on the Approval in Concept for the dock replacement portion of the project only. The public is invited to provide comments by attending this meeting and/or emailing to the address below. The meeting will be held on:

Wednesday, April 8, 2009  
6:00 PM  
City Hall Council Chambers  
3300 Newport Boulevard

The Harbor Commission agenda and staff report will be available online by April 3, 2009, at: <http://www.city.newport-beach.ca.us/hbr/HarborCommissionnew.html>

The Planning Commission will be conducting a noticed public hearing on the DEIR for the entire project in May or June of 2009. Notice of said hearing will be separately provided in accordance with applicable law when the hearing dates are known.

Chris Miller, Harbor Resources Manager  
[cmiller@city.newport-beach.ca.us](mailto:cmiller@city.newport-beach.ca.us)

829 Harbor Island Drive, Newport Beach, CA 92660  
PH: (949) 644-3034 FX: (949) 723-0589 • Website: [www.newport-beach.ca.us/HBR/](http://www.newport-beach.ca.us/HBR/)

## Public Outreach 310' Radius from Project

### Mailing Labels

Current Tool Function: **Buffer**

☐ Address Text  
☐ Park

Buffer Selection for Labels

**Buffer**  
 Create labels for  
 Site Address

distance of **310** FEET

**Create Buffer**

**Export for Labels**

Rec	Tag	AP Number	Resident	Address	Street	City	State	Zip
1	F3A_064	052 013 12	RESIDENT	207	CARNATION AVE	NEWPORT BEACH	CA	92625
2	F3A_078	052 013 18	RESIDENT	107	BAYSIDE PL	NEWPORT BEACH	CA	92625



## **Exhibit 8**

### **Public Comments as of April 3, 2009**

August 4, 2008

Dear Mr. Miller;

I hope the members of the Harbor Commission are not seriously considering a dock configuration in its present size and design at this location of Carnation Cove. I live above the Cove to the east, and have resided here for 18 years and in this area most of my life.

I am going to attempt to bring to light the many factors why I feel the existing dock should be rebuilt in its present location, with possibly one more alongside, which are presented in the following comments.

A) An obsolete 78-year old law enacted in 1930 when the Pierhead line was established for this area should not apply today with 13,000-plus yachts in this harbor.

B) This dock configuration would allow two 60' yachts to be docked on the other side of this Pierhead line projecting another 20' to 25' further into the harbor.

C) The dock should stay within the bulkhead line as the McIntosh dock is to the east and the Sprague dock is to the west.

D) The present plan would project approximately 61' beyond the bulkhead line, with two 60' boats in their slips. (Note, all calculations are from the Harbor Commission Public Notice Plans.)

E) When exiting the harbor, the channel narrows starting at the Sprague dock to the west and continues to the mouth of Newport Harbor.

F) Carnation Cove is within this narrow area, and with this project plan projecting out into the harbor it will be a hindrance to navigation for boats entering and leaving the harbor.

G) Another consideration should be the many sailboats, large and small, that use this point to come about - tacking within the harbor.

Now let us consider the environmental impacts.

1) I am requesting a full Environmental Impact Report to be done on this project.

2) In a recent City Council meeting on the Aerie Project the city attorney called the rock formation running parallel to the dock project "A Natural Relic" and the MND report states that "Carnation Cove is an important Marine Relic Habitat that no longer exists in other areas of Newport Bay."

3) Eight to nine boats, two-40', two-45', two-55' and two-60' boats, with an occasional guest vessel at dock #9 would almost completely cover the natural rock formation as it would be out of view to the Public and all boaters who enjoy the beauty of the harbor.

4) Directly in front of the cove is a favorite spot for rental boats from the Pavilion as well as other small boats fishing in the harbor. (They do catch fish here.)

5) The rock formation and cove is a habitat for heron, cranes, pelicans, seagulls and occasionally osprey, all which abound here.

6) There are only two natural rock formations surrounded by water in Newport Harbor, Carnation Cove and Pirates Cove just to the east.

7) Another consideration is disturbing the Eel Grass and marine habitat below the water.

8) The project would close off or potentially eliminate public access to the cove which is often frequented by kayakers, paddlers and small boats.

Last of all is the 155' long, 8' wide concrete wave attenuator that projects into the harbor.

1) There is a history of sand build-up along the Channel Reef Seawall and docks that continues west to the McIntosh Dock. The attenuator wall would most probably create the same problem and could also affect vessel navigation with shallowing of the harbor depth.

2) It could also create wave bounce off the attenuator wall that would affect docks across the bay and farther into the harbor, in particular when dealing with a south swell, as the rock formation as it exists acts as a natural wave diffuser.

If this all sounds negative, it's because it is. This project is not in the best interest of the harbor, boaters or the public, and will negatively impact the community of Newport Beach. It will also affect our children and the future of all who enjoy the beauty and use of this harbor.

I thank you for reading this and am hopeful you will take this project quite seriously.

Sincerely,

Joe Vallejo